

Application No. 09/701,196  
Amendment dated December 22, 2003  
Reply to Office Action of June 26, 2003

### **REMARKS**

#### **Status of the claims:**

Claims 16-37 were submitted for examination. Claims 35-37 are hereby cancelled, without prejudice, as they are drawn to a non-elected invention. Applicants reserve the right to prosecute the subject matter of these claims in a subsequently filed divisional application. Claims 16-34 have been elected for examination in this application.

Claims 17, 22, 23, 28 and 29 have been cancelled by this amendment. Claims 16, 18-21, 24-27 and 30-34 are subject to continued examination.

#### **35 USC 112 Rejections:**

Claim 17 is rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement. This rejection may now be withdrawn in view of the cancellation of claim 17.

Claim 24 is rejected under 35 USC 112, second paragraph, as being indefinite. The terminology in question, "precursors thereof" has been deleted from the claim. Therefore, the withdrawal of this rejection is now believed to be appropriate.

#### **35 USC 102 Rejection:**

Claims 16-20, 27 and 30-32 stand rejected under 35 USC 102(b) as being anticipated by EP 0394920. In view of the addition of the ingredients "at least one penetration auxiliary" and "at least one protein hydrolysate" to the independent claims 16, 30, 31 and 33, it is respectfully submitted that the '920 patent no longer anticipates the instant claims because these additional elements are not recited in the reference.

Application No. 09/701,196  
Amendment dated December 22, 2003  
Reply to Office Action of June 26, 2003

### **35 USC 103 Rejection:**

Claims 16, 21-26, 28-29 and 33-34 are rejected under 35 USC 103(a) as being obvious over the art recited at page 2, lines 10-19 of EP '920 and U.S. Patent 5,471,503. The '503 reference discloses a cosmetic formulation directed at protecting skin from the damaging effects caused by numerous environmental factors. Missing from the list of ingredients in this formulation is the glycoprotein component.

The '920 art discloses a hair and scalp treatment which contains biotin, glycoprotein, panthenol and a film former. Missing from the list of ingredients in this reference are the penetration auxiliaries and the protein hydrolysates. Furthermore, this formulation requires the presence of a blood vessel dilator, preferably a derivative of nicotinic acid, such as vitamin E nicotinate.

Applicants' formulation does not include a nicotinic acid component. If one skilled in the art were to have combined the essential elements of the '920 and '503 references, Applicants' formulation would not result because of the presence of the nicotinic acid derivative. There is nothing to suggest from the art that this component is optional and therefore may be eliminated from a cosmetic formulation. The formulation of the combined references would therefore comprise the nicotinic acid derivative as a necessary component. Since Applicants' formulation does not contain this necessary component, it is respectfully submitted therefore that the claimed invention is not obvious over the combination of the cited references.

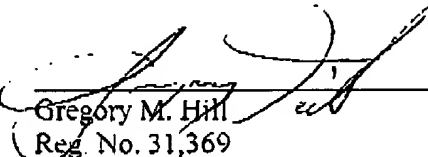
### **CONCLUSION**

Applicants submit that the remaining claims, as amended, recite patentable subject matter. Accordingly, they respectfully request the issuance of a notice of allowance. Applicants

Application No 09/701,196  
Amendment dated December 22, 2003  
Reply to Office Action of June 26, 2003

authorize a charge to Deposit Account No. 01-1250 in the amount of \$950.00 for the extension fee. Order No.03-0578. The Commissioner is authorized to debit any deficiency in the required fee or to credit any overpayment relating to the submission of this amendment to Deposit Account 01-1250.

Respectfully Submitted,

  
\_\_\_\_\_  
Gregory M. Hill  
Reg. No. 31,369  
Attorney for Applicants  
(610) 278-4964

Henkel Corporation  
Law Department  
2200 Renaissance Boulevard, Suite 200  
Gulph Mills, PA 19406

GMH/mg